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and Other Cruel, Inhuman
or Degrading Treatment
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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

DENMARK*

[22 February 1995]

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* The initial report submitted by the Government of Denmark is contained in document CAT/C/5/Add.4; for its consideration by the Committee, see documents CAT/C/SR.12 and 13 and the Official Records of the General Assembly, forty-sixth session, supplement No. 44 (A/46/44), paragraphs 94-122.

Introduction

1. This report is submitted in pursuance of article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which entered into force with respect to Denmark on 26 June 1987.

2. The report is organized in conformity with the General Guidelines regarding the form and contents of reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/14).

3. The report concentrates on developments since the submission of the initial report in 1988. Furthermore, please note the general description of Danish society in the core document, which will be submitted shortly, and the comments from the International Rehabilitation and Research Centre for Torture Victims which are attached as an annex to this report.

4. Since the submission of the initial report in 1988, Denmark has ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and in the period from 2 December to 8 December 1990, the Committee on the Prevention of Torture (CPT) paid a routine visit to Denmark. It appears from the report made by CPT in July 1991 in respect of the visit that the Committee did not find any indications of torture in the Danish prisons it visited. On the contrary, the Committee in many respects gained a positive impression of the Danish prisons, for instance regarding the prisoners' possibility to receive visitors, the hygiene in the prisons, educational and training facilities for the prisoners, the library system and the spokesman scheme.

5. After the visit, CPT put forward a number of recommendations and comments which the Danish authorities, to a wide degree, have carried out. Certain points are still being debated as part of the ongoing communication between CPT and the Government, which is provided for under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

6. Since the submission of the initial report in 1988, Denmark has incorporated the European Convention on Human Rights en bloc into Danish law by Act No. 285 of 29 April 1992. The reason for incorporating the European Convention on Human Rights, to which Denmark has been a contracting party since 1953, was primarily a desire to increase awareness of the Convention among judges, the prosecution, the police and lawyers, as well as in society as a whole.

7. The European Convention on Human Rights was also applied by the Danish courts before it was incorporated in Danish law. However, there seems to have been a rise in the number of court decisions referring directly to the Convention since it was incorporated.

8. Since the submission of the initial report in 1988, Denmark, furthermore, on 24 February 1994, ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. Consequently, the Protocol entered into force with

respect to Denmark on 24 May 1994. In order for Denmark to be in a position to ratify the Protocol, the provision for the death penalty in respect of certain serious offences committed during the occupation of Denmark in the Second World War has been repealed. The repeal was effected by Act No. 1097 of 22 December 1993 and subsequently not even a theoretical provision for the death penalty exists in Denmark.

Information on new measures and developments relating to the implementation of the Torture Convention (arts. 1-16)

Articles 1 to 4

9. There have been no changes in legislation or practice in relation to these provisions.

Article 5

10. As mentioned in the initial report (para. 19), Denmark, in 1986, established jurisdiction based on the principle of aut dedere aut judicare with a view to fulfilling the requirements as to jurisdiction under article 5.

11. It might be noted that on the basis of the above-mentioned established jurisdiction, charges have been brought against one person now staying in Denmark for having resorted to violence of a particularly raw, brutal or dangerous character and of such a serious nature that it constitutes particularly aggravating circumstances in 24 instances in a Croatian prison camp. Two of the victims died.

12. The case concerns a person from the former Yugoslavia, a Muslim man married to a Croatian woman. He was himself a prisoner-of-war in a Croatian prison camp but had - probably because of his marriage to a Croatian woman - a special supervisory role in the camp. The aggrieved parties have in their statements to the police described the defendant as a prison guard, a supervisor and a "super prisoner".

13. The criminal trial against the person in question was initiated before a jury in the Eastern High Court on 7 November 1994. On 22 November 1994, after having been found guilty on the majority of the counts, the defendant was sentenced to eight years' imprisonment. The defendant has appealed against the decision to the Danish Supreme Court.

Article 6

14. Please see the initial report submitted by Denmark (paras. 20-24) as the information given in that report still applies. It should be mentioned that the person who was sentenced to eight years' imprisonment for having committed war crimes in a Croatian prison camp (see paras. 11-13 above) has been held in custody since the Danish authorities received information about the accusations against him.

Article 7

15. Please see paragraphs 11 to 13 above concerning the charges which have been brought against a person from the former Yugoslavia for war crimes.

Articles 8 and 9

16. Denmark has through its work in the United Nations participated in the establishment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. The legal foundation for the Danish cooperation with the Tribunal and the legislation necessary in this respect relating among other things to the extradition of suspects for prosecution by the Tribunal have been implemented by Act No. 1099 of 21 December 1994 on prosecution by the International Tribunal for the Prosecution of War Crimes in the Former Yugoslavia. The Act came into force on 1 January 1995.

17. The Act provides that the Minister for Justice can decide that the Act, with the necessary amendments, might apply in other cases of international prosecution of war crimes. It could, for instance, be applied in relation to other tribunals for the prosecution of war crimes, including the International Tribunal for Rwanda which the Security Council decided to establish on 8 November 1994 (resolution 955 (1994)).

18. So far the International Criminal Tribunal for the Former Yugoslavia has not asked to have any persons staying in Denmark extradited for prosecution. Please note that the defence lawyer for the person mentioned in paragraphs 11 to 13 above inquired of the Chief Prosecutor of the Tribunal whether a request would be made for the person in question to be extradited for prosecution before the Tribunal. The Chief Prosecutor replied that such a request would not, at present, be put forward.

19. Finally, it should be mentioned that Denmark has taken a number of initiatives with the purpose of procuring information for the future work of the Tribunal. It has thus been decided that the police may question persons from the former Yugoslavia who wish to give statements in respect of the fact that they have either been victims or witnesses of war crimes or serious human rights violations in connection with the conflict in the former Yugoslavia.

20. A special arrangement has been made with a view to ensuring that any information concerning war crimes committed in the former Yugoslavia which persons staying in Denmark might have is brought to light. The arrangement works as follows: nurses at the Red Cross centres where persons from the former Yugoslavia are staying hand out questionnaires to the persons who think they hold information on war crimes.

21. These questionnaires are then sent to the Office of the National Commissioner of the Danish Police (Rigspolitiet) who assesses whether the information might be adequate to initiate proceedings against one or several perpetrators. If so, the Office of the National Commissioner will summon the

person who has filled in the questionnaire for a more extensive questioning. When all the relevant information has been collected, the Office of the National Commissioner will pass the information on, depending on the circumstances, to the Ministry of Foreign Affairs with a view to it being passed on to the Tribunal and/or other United Nations organizations or organs.

22. In addition to this special arrangement, the police will, as usual, initiate a standard criminal investigation in the event that persons staying in Denmark are suspected of having committed or assisted in war crimes.

Article 10

23. Concerning police personnel, it should be noted that, as part of the mandatory training which all members of the police force go through at the Danish Police Academy (Politiskolen) when they join the force, they are carefully instructed that while carrying out their duties they are not allowed to use excessive force. They are constantly made aware of this fact during their training at the Academy. In this connection, it might be mentioned that it appears directly from the Danish Administration of Justice Act (retsplejeloven) that an arrest must be made in as gentle a manner as possible (sect. 758, para. 1). As of the summer of 1995, the subject "Human Rights" will be part of the basic training of police officers.

24. Regarding personnel employed in the Prison Service (kriminalforsorgen), it should be noted that everyone who starts work in the Prison Service must follow an introductory training programme which, among other things, includes a general presentation of international conventions including the Torture Convention. In connection with the ongoing training of employees, this subject is constantly brought up again. As part of the course "Prison Service Training" (kriminalforsorgslære), uniformed personnel are informed about the most important international conventions concerning the treatment of prisoners. In this connection, the Torture Convention is a specific part of the curriculum.

25. In order to make sure that the right persons are employed to work in the Prison Service, the focus of the training of personnel is not just on the trainee's knowledge of the subjects but on their willingness and ability to use this knowledge in practice. The attitude of the trainee is thus of decisive importance.

26. Additionally, the Danish prison system is very open, which in itself is an important guarantee against violations as the prisoners' possibility to receive visitors at short intervals is an effective control of conditions in detention.

27. Medical doctors working within the framework of the Prison Service are trained in the particular conditions which they must be aware of. This training takes place, for instance, at conferences on medical ethics for doctors working in the Prison Service, at which they are informed about the contents of the international conventions relating to this area.

Article 11

28. Please see paragraphs 29 to 31 of the initial report submitted by Denmark, which still apply.

29. During the Committee's consideration of the initial report submitted by Denmark, requests were made for, among other things, a detailed account of two aspects, namely when criminal cases are dealt with orally and the regulations concerning the appointment of defence lawyers.

30. It may be noted in this connection that all criminal cases are dealt with orally. Certain decisions during the investigation may on the other hand be made without oral consideration. Such decisions involve, for instance, appeal hearings with regard to issues such as custody, searches and other measures under criminal procedure. Equally, a particular appeal regarding questions of form occurring during the oral proceedings of a criminal case will be dealt with in writing unless the appeal instance complies with a request for an oral discussion of the case.

31. Concerning the regulations on the assistance of a defence lawyer, the legal position in Denmark is that anyone charged with a criminal offence is entitled to take on a defence lawyer. If, during the criminal proceedings, it appears that the penalty will be stricter than either a fine or simple detention, a lawyer will be appointed for the defendant, if the party in question has not already taken on a lawyer. The same applies if lay assessors are to assist in the case, if the examination of the defendant is to take place behind closed doors and if the proceedings are based on a complaint, regardless of the fact that the defendant had the assistance of a lawyer at the court of first instance.

32. The fee paid to an appointed lawyer will initially be paid by the State but if the defendant is found guilty, the sentence may state that the party in question is to pay the costs of the case. If so, the authorities will try to collect the fee paid to the defence lawyer from the convicted party.

Articles 12 and 13

33. In 1990, the Copenhagen City Court passed sentence in a private criminal case which the Danish Union of Prison Staff had brought against two nurses formerly employed by the Prison Service in Copenhagen for defamation based on an article in which the two nurses criticized the treatment that asylum-seekers received in prisons in Copenhagen. In spite of the fact that a few of the statements which the two nurses had made were found to be without basis in fact, they were acquitted.

34. On this basis, the Ministry of Justice decided, with reference to international United Nations commitments, to ask a judge to carry out an investigation of the treatment of refugees in the prisons in Copenhagen. In February 1991, two specific cases regarding the treatment of aliens were included in the investigation.

35. In March 1992, the judge submitted a report on the two specific cases. The judge did not find that the cases involved torture or other degrading treatment, but he pointed out that the personnel were responsible for certain mistakes and instances of negligence in connection with the two cases. However, the judge did not find that these involved criminal liability or gave rise to more serious disciplinary action against the persons involved. Some employees were reprimanded on the basis of the report.

36. In 1993, the judge submitted the general part of his report, from which it appears that it has not been possible to identify a "core group" of employees with a hostile attitude towards refugees. However, the judge criticized some officials in the Prison Service after having examined a number of specific cases. The Ministry of Justice, Department of Prisons and Probation, did not find grounds for taking disciplinary measures against the persons in question, but consented to the critique put forward by the judge and pointed out the incidents to the persons involved.

37. On the basis of the conditions which the judge considered in his reports, the Prison Service has implemented a number of reforms and structural changes, including improved information to detained aliens and improved training of the personnel to help them handle crisis situations. Furthermore, the Ministry of Justice, Department of Prisons and Probation, has issued guidelines regarding the duty of the personnel to report violence and other instances of criticizable conduct vis-à-vis the prisoners immediately, and directly to the management of the workplace.

38. Trials are currently pending before the courts concerning the question of compensation of the two persons to whom the above-mentioned cases relate.

39. Amnesty International has mentioned the two cases, both directly to the Danish Government and in the annual reports of the organization, and has also been critical of the two reports submitted by the judge regarding the cases. Amnesty International was primarily of the opinion that the judge's assessments of whether these were cases of torture or other degrading treatment were not correct and that the incidents ought to have had disciplinary consequences for the officials involved, and furthermore that the two parties in question ought to have received compensation.

40. In June 1994, Amnesty International published a report on the Danish police in which the Danish police is criticized in general on a number of counts. This criticism is based partly on a number of specific cases and partly on a number of general matters including the use by the Danish police of the "leg-lock" position.

41. In August 1994, the Danish Government received a request from the United Nations for further information on the same issues which were raised by Amnesty International in the report of June 1994.

42. Immediately after the publication of Amnesty International's report, the Danish authorities initiated a number of investigations into both the general matters as well as the specific cases mentioned in the report.

43. As regards the use of the "leg-lock" by the police, the Danish Minister for Justice decided on 29 June 1994 to suspend the use of the kind of "fixed leg-lock" which was criticized by Amnesty International and at the same time the Danish Ministry of Justice asked the Medico-Legal Council, an independent medical body, to make an assessment of the medical risks connected with the use of this particular kind of fixed leg-lock.

44. On 30 November 1994, the Medico-Legal Council stated that owing to the lack of exact scientific examinations, the possibility that the fixed leg-lock position could be dangerous for persons who would typically be put in this position could not be rejected and the Council was therefore of the opinion that the method could not be considered as being without medical risks. The Council furthermore found that both pulse and breathing should be carefully watched in connection with the use of all kinds of leg-lock where the person is lying face down on the ground.

45. In a letter dated 2 December 1994, the Ministry of Justice asked the National Commissioner of the Danish police to inform all police districts of the assessment of the Medico-Legal Council and that the suspension of the use of the above-mentioned kind of fixed leg-lock had been made permanent based on this assessment.

46. As regards the specific cases dealt with by Amnesty International, the Danish authorities have initiated a number of investigations. Investigations are being conducted by the Copenhagen City Court, by the Director of the Public Prosecution and by the District Public Prosecutor for Sealand.

47. The Danish Government has informed the United Nations High Commissioner for Human Rights about the steps described above and has furthermore of course promised to inform the United Nations of the results of the investigations that have been initiated as soon as they are available.

Article 14

48. A person subjected to torture in Denmark has a right to claim compensation from the person who subjected him or her to torture, in a criminal case brought against the alleged offender. If the person concerned is found guilty by the court, the court will have to decide on the aggrieved party's claim for compensation, unless the information concerning the question of compensation in the specific case is found to be inadequate. The court might, in certain cases when it is required, appoint an attorney for the aggrieved party if the latter makes such a request.

49. Subject to the Act on Compensation from the State to Victims of Criminal Offences, the State will grant compensation for personal injuries caused by a breach of the Penal Code. It is, however, a prerequisite for the granting of compensation that the breach is reported to the police without unnecessary delay. In return, compensation will be granted even though the perpetrator may not be found.

50. The implications of the above-mentioned Act are thus that a person who may have been subjected to torture in Denmark will be in a position to have a claim for compensation against the perpetrator adjudged in connection with a possible criminal case against the alleged perpetrator and, additionally, the aggrieved party might receive compensation from the State if, for instance, the perpetrator is not found or if he or she does not have enough money to pay the compensation.

Article 15

51. There have been no changes in legislation or practice in relation to this provision.

Article 16

52. Please see paragraphs 33 to 45 above.

Annex

COMMENTS FROM THE INTERNATIONAL REHABILITATION AND RESEARCH CENTRE FOR TORTURE VICTIMS

1. Referring to the annex to document CAT/C/5/Add.4, the following primarily concerns developments since 1988.

2. The Rehabilitation and Research Centre for Torture Victims (RCT) and its sister organization, the International Rehabilitation Council for Torture Victims (IRCT) are independent, private organizations. However, they received considerable subsidies from the Danish Government, in 1994 D.Kr. 7,885,800 to the RCT, and D.Kr. 14,759,200 to the IRCT. The RCT contributes to the fulfilment of the commitment of Denmark under the Convention against Torture, especially as stated in articles 3, 10 and 14.

Article 3

3. In order not to "refouler" persons, it is necessary for persons who are involved in dealing with asylum cases to know about the behaviour of torture victims. The RCT provides teaching on the issue to a number of persons and organizations:

(i) The border police (the first ones to receive asylum-seekers);

(ii) Staff of the Danish Red Cross, who are responsible for the running of centres where asylum-seekers stay until their applications for asylum have been decided upon;

(iii) Those persons in the various police districts who are responsible for foreigners; and finally

(iv) Members of the Danish Refugee Board, the Board which decides whether a person should receive asylum or not.

Article 10

4. As described in the annex to document CAT/C/5/Add.4, the Danish Government attaches very great importance to education and information about the prevention of torture. The RCT/IRCT use 21.5 per cent of their budgets on education and information activities. In 1994, as an example, 6,680 persons received training and information for a shorter or longer period of time. Of these 3,168 were Danish citizens and 3,512 foreigners. The eduction of special groups has been extended since 1988 among others to the groups mentioned under article 3. Furthermore, supplementary teaching is given to the police, to judges and to all prison doctors in Denmark.

5. The pre-graduate curriculum now contains education of all medical students, all dentist students, all nurse students and all physiotherapy students in Denmark, and there are optional courses within the law course.

6. Postgraduate education is given to certain groups of lawyers and to all psychiatrists.

7. The RCT has produced relevant teaching material for the various groups, of course in Danish, but part of it also in Albanian, Arabic, English, French, Italian, Spanish, Swedish, Turkish and Ukrainian.

Article 14

8. As may be seen in paragraph 35 of the first periodic report, no person in Denmark has been charged with practising torture, and as a consequence there are no Danish torture victims.

9. The RCT treats persons who have obtained asylum in Denmark, and who earlier have been exposed to torture. The RCT seeks to give "as full rehabilitation as possible", consisting of psychological and physiotherapeutical treatment of the torture survivors and their relatives and social counselling, all with due regard to cultural differences. Until now, the Centre in Copenhagen has treated persons from more than 50 different nations.

10. The RCT is the first centre of its kind and has over the years through research sought to bring the treatment of the survivors to perfection. This knowledge has been spread globally by the IRCT, which now has a network of 74 treatment centres in 43 countries, and initiatives in 28 other countries.

11. The RCT provides advice on budgetary questions relating to the treatment of torture victims in the European Union and to the United Nations Voluntary Fund for Victims of Torture.

12. The IRCT has held several international meetings on the problems of "Torture as a health problem" and "Doctors as torturers". At one of the meetings the "IRCT Declaration of Istanbul", was adopted. The text of the Declaration was reproduced in a document of the Commission on Human Rights (E/CN.4/1993/23/Add.2, annex).